UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

42-15 CRESCENT STREET LLC Plaintiff, vs. HARLEYSVILLE WORCESTER INSURANCE COMPANY, Defendant.	Civil Action No.:

COMPLAINT

Plaintiff 42-15 Crescent Street LLC ("Crescent Street" or "Plaintiff"), by and through its undersigned attorneys, for its Complaint against defendant insurance company Harleysville Worcester Insurance Company ("Harleysville Insurance"), alleges the following:

NATURE OF THE ACTION

1. This is an insurance coverage action for breach of contract, breach of NY GBL § 349, breach of the duty of good faith and fair dealing, and declaratory judgment against defendant Harleysville Insurance.

2. Crescent Street seeks insurance coverage under a Commercial Inland Marine Coverage part of a builder's all risk insurance policy that Harleysville Insurance sold (the "Builder's All Risk Policy") in connection with the renovation of a mixed-use rental investment property in the Borough of Queens, New York.

3. Crescent Street seeks the full benefits and protection of the insurance it purchased from defendant Harleysville Insurance for the substantial losses sustained as a result

of a severe (and fully covered) weather event at the property at 42-15 Crescent Street, Long Island City, NY, in the County of Queens (the "Property").

4. Crescent Street purchased the Property, an existing ten-story building, in order to renovate and develop it into commercial and residential rental apartments in the fast-growing Long Island City neighborhood of Queens, New York.

5. After Crescent Street purchased the Property in late 2012, it oversaw and paid for extensive renovations as well as the addition of two floors.

6. When the June 2015 weather event struck, the Property was still under renovation, although several floors were effectively completed or nearing completion.

7. Specifically, on or about June 3, 2015, a severe weather system came through the New York City area and caused substantial property damage to the Property (the "Incident").

8. Crescent Street incurred substantial "hard" and "soft" costs to repair and replace the damaged property (covered "soft" costs include, among other things, interest expense, real estate taxes, insurance expense, and architectural and inspection fees).

9. Crescent Street also incurred substantial losses due to the Incident, because the damage significantly interrupted the ongoing renovations and construction work at the site and delayed the renovation project by approximately three months.

10. All of the hard and soft costs of repair or replacement, and all of the Business Income losses, are covered under the Builder's All Risk Policy, which was in full effect at the time of the Incident.

11. As a result, Crescent Street timely submitted its insurance claims to Harleysville Insurance for insurance coverage under the Builder's All Risk Policy.

12. The Builder's All Risk Policy explicitly provides, among other things, insurance coverage for: (1) property damage repair and replacement; (2) so-called "soft costs"; and (3) Business Income insurance coverage where income is lost due to the occurrence of a covered cause of loss.

13. Despite this, Harleysville Insurance has paid to Crescent Street only a fraction of the loss amounts covered and has wrongfully failed and refused to pay the majority of Crescent Street's pending insurance claim.

14. Instead of paying Crescent Street's loss in full, Harleysville Insurance has resorted to engaging Crescent Street into a protracted and harassing claims process which involves, among other things, the refusal to make timely claim payments, the refusal to commit to any reasonable time period in which it might do so, refusing to pay uncontested amount of loss suffered by Crescent Street, and seeking to extract concessions on insurance coverage for amounts already confirmed as valid by Harleysville Insurance's adjustors.

15. Harleysville Insurance has engaged in this claims handling conduct despite the fact that its claims agent and investigator, Kaufman, Dolowich Voluck ("KDV"), has been in possession for several months (if not close to two years) of information and supporting documents confirming the amounts of actual loss suffered by Crescent Street.

16. Harleysville Insurance has thus far failed to honor its insurance coverage obligations in good faith, paying less than $1.6 million to Crescent Street towards the hard

damage claim, paying nothing for its soft costs claim, and paying nothing for its Business Income claim.

17. The refusal by Harleysville Insurance to pay these claim amounts is without any reasonable justification.

18. Even worse, rather than fairly and promptly pay Crescent Street's claim, Harleysville has sought to pressure Crescent Street to take less than the insurance coverage actually owed. Harleysville has sought from Crescent Street, on at least two occasions, concessions on Crescent Street's property damage claim and its Business Income claim.

19. Such claims handling tactics are a breach of the insurance policy, a breach of the obligation to conduct claims investigation and adjustment in good faith, and a violation of applicable law.

20. Crescent Street brings this action to enforce its insurance coverage rights in full and to seek, among other things, consequential damages against Harleysville Insurance.

THE PARTIES

21. Plaintiff 42-15 Crescent Street LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business located in Long Island City, New York. Plaintiff 42-15 Crescent Street LLC is a subsidiary of Meadow Real Estate Fund II LP.

22. Upon information and belief, defendant Harleysville Worcester Insurance Company is an insurance company organized under the laws of the State of Pennsylvania with its principal place of business located at 355 Maple Avenue, Harleysville, Pennsylvania.

23. Upon information and belief, defendant Harleysville Insurance is now a member insurance company of the Nationwide Mutual group of insurance companies.

VENUE AND JURISDICTION

24. This Court has jurisdiction over Harleysville Insurance because it was, at all relevant times, a corporation authorized to transact business in the State of New York and/or conducted continuous and substantial business in the State of New York.

25. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because Crescent Street is organized under the laws of Delaware, and has its principal place of business in, New York, while Harleysville Insurance is incorporated and has its principal places of business in Pennsylvania, and the matter in controversy exceeds the sum or value of $75,000.

26. Personal jurisdiction is proper in New York because Harleysville Insurance operated, conducted, engaged in or carried on a business or business venture in this state, there is the requisite nexus between the business and this Action, and because it engages in substantial and not isolated activity within New York. Further, venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Crescent Street maintains key business operations, including those involving the Property and the purchase of insurance from Harleysville in New York, and certain events and omissions giving rise to the claim involving the Property occurred in this District.

27. Upon information and belief, venue is also proper in this district because the all-risk builders risk insurance policy was delivered in this jurisdiction.

FACTUAL BACKGROUND

Crescent Street Buys the Property and the Builder's Risk Insurance Policy

28. On December 10, 2012, Crescent Street purchased the real property at 42-15 Crescent Street in Long Island City for renovation, development and ultimate sale.

29. Crescent Street is owned by a privately held investment manager specifically focused on the real estate industry.

30. Crescent Street's management team has over 50 years of collective real estate investment experience and has been responsible for the acquisition and ongoing asset management of $24 billion of real estate assets located in the United States, Europe and Asia through over 200 separate transactions.

31. As part of the 42-15 Crescent Street development project, Crescent Street purchased builder's all risk insurance in 2013 from Harleysville Insurance in connection with the renovation of the Property in the fast-growing real estate market of Long Island City.

32. A true and correct copy of the Builder's All Risk Policy (policy no. CIM00000086581Q) sold to and received by Crescent Street is attached hereto as Exhibit A.

33. The Builder's All Risk Policy had an original policy period of May 8, 2013 through November 8, 2014. The policy period was thereafter extended to provide seamless insurance coverage throughout the relevant period of loss and damage suffered by Crescent Street.

34. All insurance premiums due and owing for the Builder's All Risk Policy were paid in full by Crescent Street.

35. The Builder's All Risk Policy provides broad insurance coverage "against Risks of Direct Physical 'loss' or damage to Covered Property, except those causes of loss listed in the Exclusions." It also provides insurance coverage for soft costs and for Business Income-related losses.

36. Harleysville Insurance has conceded that the Builder's All Risk Policy covers the damage caused by the weather event and made initial payments to Crescent Street in 2015 in the total amount of $1,542,061.48. Without any reasonable justification, however, Harleysville Insurance has failed or otherwise refused thus far to pay a substantial amount of Crescent Street's insurance claim since 2015.

37. Specifically, Harleysville Insurance paid to Crescent Street $500,000 on June 25, 2015 and $1,042,061.48 on September 15, 2015—both payments toward the "hard damage" portion of insurance claim, *i.e.*, repair or replacement of physically damaged property.

38. Harleysville Insurance, however, has since failed to pay any further amounts to Crescent Street, including: (1) the failure to pay the Business Income claim, in whole or in part; (2) the failure to pay the "soft" claim amounts, in whole or in part; and (3) the failure to pay the hundreds of thousands of dollars still owed for the repair costs for the "hard damage" portion of the insurance claim.

39. Harleysville Insurance's obligation to pay the balance of the insurance claim is long overdue.

40. To the extent not waived, estopped, or otherwise excused, Crescent Street has complied with all necessary terms and conditions precedent of the Builder's All Risk Policy, and is entitled to all the benefits of insurance provided by the Builder's All Risk Policy.

Crescent Street's Covered Losses

41. After the June 2015 property damage, Crescent Street provided notice of the damage, and worked with due dispatch to repair and replace those damaged portions of the project renovation.

42. Crescent Street coordinated the rebuild and repair efforts and kept Harleysville Insurance informed of the work. Crescent Street was charged for these repairs by its Construction Manager, which oversaw the trade subcontractors. In turn, the trade subcontractors dealt with their own vendors and suppliers.

43. The claims submitted to the Harleysville Insurance for insurance coverage can be divided into three main parts: (1) "soft" costs claim, (2) "hard damage" claims for repair and replacement; and (3) Business Income loss claim.

44. Although Harleysville Insurance initially recognized that the Incident triggered insurance coverage under the Builder's All Risk Policy and made a partial payment to Crescent Street in the amount of $1,542,061.48 in mid-2015, Harleysville without justification has failed to pay to Crescent Street any additional sums, including amounts for soft costs and for Business Income loss.

45. Furthermore, Harleysville has failed to pay under the Builder's All Risk Policy the full amount of the property "hard damage" claim, even though it recognized that all, or nearly all, of the property damage was properly calculated and supported close to a year ago.

46. On June 8, 2016, in fact, Crescent Street met with representatives of Harleysville Insurance, including KDV and James Woods (whom Harleysville Insurance identified to Crescent Street as its property damage expert adjustor).

47. Mr. Woods reviewed the information previously supplied by Crescent Street, discussed it at the meeting, and then indicated that Crescent Street had properly supported its repair efforts and the amounts caused by the Incident.

48. Despite this, soon after Mr. Wood's departure from the meeting, other representatives of Harleysville insurance sought a $200,000 to $300,000 concession on the amounts Harleysville would pay as a result of the Incident for the property damage repair component of the insurance claim.

49. Additionally, soon thereafter, representatives of Harleysville insurance sought a second concession. Specifically, Harleysville sought to reduce the amount of Crescent Street's claim of Business Income loss, involving the loss of anticipated revenue by over $200,000—in essence by seeking to extract an agreement by Crescent Street that it omit a full month of projected business income for the three-month delay caused by the Incident.

50. When Crescent Street objected to these tactics and indicated that it expected Harleysville Insurance to honor its insurance coverage obligations in full, Harleysville (1) instructed its claims agent, KDV, to send a letter demanding a proof of loss filled out on Harleysville Insurance's form, and (2) demanded that Crescent Street provide a representative to appear for an examination under oath, and (3) permit an inspection of "original" claim documents demonstrating the amount charged to Crescent Street and paid by Crescent Street.

51. At this time, Harleysville also challenged the documents supplied to support the damage repair claim.

52. Crescent Street complied with the requests, providing more documentation in support of its losses, completing the proof of loss (and submitting amended proofs of loss),

appearing for the examination under oath, and coordinating the inspection of "original" documents (despite the fact that the vast majority of claim documents involved invoices, receipts, records and other pieces of information that were generated by third-parties, including banking institutions, in electronic format).

53. Despite Crescent Street's full compliance with Harleysville Insurance's requests after Crescent Street would not agree to the insurance claim concessions sought, Harleysville Insurance continued to drag-out the claims process through an array of unreasonable and improper claims tactics.

54. One such tactic was refusing to reasonably consider the sworn lien waivers that Crescent Street was able to obtain from the contractors working at the Property as evidence of payment of the work performed by such contractors.

55. Upon information and belief, such lien waivers are a well-established method of evidencing payment of construction related work.

56. Despite this, Harleysville sought to contest and disregard this documentation—even though Harleysville Insurance itself used such evidence to establish payment of work performed by a debris and remediation contractor that it hired to perform early work at the Property shortly after the Incident. Crescent Street also submitted to Harleysville Insurance invoices, receipts, cancelled checks, bank statements, wire transfer information, and other documentation to evidence the amounts it had to pay due to the Incident.

57. Upon information and belief, Harleysville Insurance's treatment of this claim information was calculated to delay the claims process, seek unwarranted claim amount

concessions from the Insured and otherwise minimize the amount it had to pay for the damage to the Property without any legitimate purpose.

58. Another improper claim handling activity of Harleysville Insurance occurred when it attempted to use invoice information purportedly obtained from a materials supplier in an effort to seek additional claim amount concessions. Specifically, during the examination under oath, Harleysville Insurance's agent, KDV, presented an invoice it suggested reflected the 'true' amount of charges for wood flooring used in the repair of the Property due to the Incident. The invoice information presented by Harleysville showed a lesser per unit price for flooring material than that previously furnished.

59. Instead of alerting Crescent Street promptly that it may have been overcharged for materials for the repair (if that is even the case), Harleysville Insurance, upon information and belief, sought to use this documentation to seek a concession of claim amounts from Crescent Street.

60. Upon receiving the material supplier's information during the examination under oath, a representative of Crescent Street contacted the contractors and material supplier of the floor materials for clarification. Upon receiving additional documentation, Crescent Street promptly provided it to Harleysville Insurance.

61. Whether additional surcharges were added to the cost of flooring that Crescent Street purchased through its contractors is beside the point of whether there has been actual loss by Crescent Street in having to repair the Property due to the Incident.

62. It is improper for Harleysville to use its suspicions about the conduct of material suppliers and subcontractors to the detriment of its policyholder in order to avoid or

delay payment of a covered insurance claim—especially this late in the claim process as the two year anniversary of the damage looms.

63. Harleysville Insurance has failed to exercise good faith in the investigation and handling of Crescent Street's claim.

64. Harleysville Insurance failed to interpret and apply the terms of the Builder's All Risk Policy in good faith.

65. Crescent Street has been harmed by the wrongful refusal of Harleysville Insurance to pay the balance of its insurance claim, by the failure of the Harleysville Insurance to investigate and handle the insurance claim in good faith, and by Harleysville Insurance' failure to interpret and apply the terms of the Builder's All Risk Policy in good faith.

COUNT I
(Breach of Contract by Harleysville Insurance)

66. Crescent Street repeats and re-alleges paragraphs 1 through 65 of this Complaint as if fully set forth herein.

67. The Builder's All Risk Policy was in full force and effect at the time of the Incident that caused the subject losses damage, and Harleysville Insurance is obligated pursuant to the terms of the Builder's All Risk Policy to make payments to Crescent Street for its unpaid loss amounts.

68. These unpaid loss amounts are covered and yet Harleysville Insurance has failed or otherwise refused to make payments for the balance of the property hard damage claim, for any portion of the soft costs claim, and for any portion of the Business Income claim.

69. The failure to pay these amounts to Crescent Street constitutes a breach of Harleysville Insurance's contractual duties owed under the Builder's All Risk Policy.

70. Harleysville Insurance has further violated its duty of good faith and fair dealing in a number of ways, including, among others:

(a) by failing to make payments to Crescent Street for the losses incurred for soft costs, Business Income loss, and a substantial balance of Crescent Street's hard damage claim arising from the Incident at a time that Harleysville Insurance knew or reasonably should have known that Crescent Street was entitled to such insurance coverage;

(b) by misrepresenting policy terms and positions during the adjustment of the loss for the sole purpose of wrongfully delaying or denying coverage;

(c) by failing to pay undisputed amounts of the property damage loss amount in order to avoid payment of the total amount of covered loss;

(d) by forcing Crescent Street to incur significant time and expense before resolving properly and fairly the insurance claim;

(e) by willfully and in bad faith interpreting the Builder's All Risk Policy and the factual circumstances so as to resolve ambiguities and uncertainties in its own interests and against those of Crescent Street;

(f) by deliberately delaying a coverage determination with respect to the insurance claims for an unreasonable time period;

(g) by withholding undisputed amounts of loss payments in an effort to seek concessions on the total amount of the loss suffered and claimed by Crescent Street;

(h) by failing to provide a reasonable explanation of the basis for refusal to pay insurance coverage for the subject insurance claims; and

(i) by forcing Crescent Street to commence and prosecute this action to obtain the insurance coverage to which it is entitled under the Builder's All Risk Policy.

71. Every insurance policy imposes upon the insurance company a duty of good faith and fair dealing with its policyholder.

72. The foregoing actions by Harleysville Insurance violate this duty and are wrongful, intentional, willful, wanton, immoral, oppressive, unscrupulous, and offend public policy.

73. Crescent Street suffered a substantial and ascertainable loss of money as a consequence of the Harleysville Insurance' bad faith, unfair and/or deceptive actions, the exact amount to be proven at trial.

74. Harleysville Insurance acted in reckless disregard of Crescent Street's rights, and with the intent to vex, injure, and annoy so as to constitute oppression, fraud and malice, thereby justifying consequential damages (including an award of attorney fees and costs incurred in bringing and maintaining this Action), as well as punitive and exemplary damages sufficient to punish the Harleysville Insurance and to deter such conduct in the future.

75. As a result of Harleysville Insurance's breach of its contractual duties under the Builder's All Risk Policy, Crescent Street has suffered damages in an amount to be proven at trial.

COUNT II
(Violation of N.Y. Gen. Bus. Law § 349)

76. Crescent Street repeats and re-alleges the allegations contained in paragraphs 1 through 75 as though fully set forth herein.

77. Harleysville Insurance and its agents, servants, and employees, are governed by regulations promulgated by the Superintendent of Insurance of the New York State Insurance Department as set forth in 11 N.Y.C.R.R. § 216, *et seq.*, and under provisions of New York Insurance Law § 2601, prohibiting unfair claim settlement practices.

78. In addition, Harleysville Insurance and its agents, servants and employees, are prohibited from engaging in deceptive acts and practices pursuant to New York General Business Law § 349.

79. New York Insurance Law prohibits and/or requires certain actions by insurance companies, their agents and representatives and conduct by insurance companies, their agents and representatives who, by deviating from the following rules, are deemed to have engaged in unfair claim settlement practices enumerated under New York Insurance Law § 2601:

> (j) knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
>
> (k) failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;
>
> (l) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;
>
> (m) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear, except where there is a reasonable basis supported by specific information available for review by the department that the claimant has caused the loss to occur by arson. After receiving a properly executed proof of loss, the [insurance company] shall advise the claimant of acceptance or denial of the claim within thirty working days;
>
> (n) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them; . . .

80. Moreover, New York General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce in the furnishing of any service in the State of New York and makes such acts and practices unlawful.

81. Harleysville Insurance, through its agents, servants, and employees engaged in deceptive acts and practices in violation of New York General Business Law § 349 by, among other things, knowingly misrepresenting pertinent facts or policy provisions relating to coverage at issue, by failing to have and implement reasonable standards to effectuate prompt, fair and equitable settlements of claims where liability is reasonably clear, by failing and refusing to provide insurance coverage where required, compelling policyholders such as Crescent Street to file this Complaint to recover amounts due under the Policy, and failing to adopt and implement reasonable standards for the proper and reasonable investigation of claims in violation of New York Insurance Law § 2601.

82. The Harleysville Insurance policy at issue states on the first page that Harleysville Insurance is "Good people to know". This has not been the experience of Crescent Street under any sense of that phrase.

83. Harleysville Insurance, on its Website, advertises that it: "is a member of the Nationwide family of companies and a leading regional provider of insurance products and services for small and mid-sized businesses, as well as for individuals, and ranks among the top 60 U.S. property/casualty insurance groups. We specialize in insuring small businesses and we're known for creating strong, lasting relationships with our customers."

84. Harleysville also advertises its "Protection for your business" and states that Harleysville offers a wide variety of insurance products for businesses...from coverage for your building and its contents to your general liability needs...from your vehicles to your employees...everything you need to protect you and your business! . . . While we insure many different types of businesses, we also offer a number of customized programs for certain

customer segments. These programs have been designed with the special needs of these businesses in mind. Check to see if we offer a special program for your business."

85. Harleysville also promotes to policyholders that "While our products are important, service is still our priority. We offer our commercial customers a host of value-added services, in addition to our quality insurance protection. For example, if you insure your business with us, we offer personalized loss control programs to help you keep your workplace safe for you and your employees and to protect your facility from fire and other potential hazards."

86. Upon information and belief, Harleysville Insurance engaged in wrongful practices with regard to the advertising, promoting, and selling of insurance policies of the type at issue in this Complaint, all of which are insurance products that are designed and intended by Harleysville Insurance to be purchased by businesses small and large in the State of New York.

87. Harleysville Insurance's conduct is recurring in that it has already been found to have caused the insolvency of a small to mid-sized business after Harleysville Insurance failed to pay promptly the full amount of insurance coverage owed to a commercial policyholder for property damage and business income loss by the New York Court of Appeals in *Bi–Economy Mkt., Inc. v. Harleysville Ins. Co. of N.Y.*, 856 N.Y.S. 2d 505 (2008). *See also Hayes v. Harleysville Mut. Ins. Co.*, 841 A.2d 121 (Pa. Super. 2003) (affirming trial court ruling that insurance company acted in bad faith toward policyholder); *Zimmerman v. Harleysville Mut. Ins. Co.*, 860 A.2d 167 (Pa. Super. Ct. 2004) (same); *Galko v. Harleysville Pennland Ins. Co.*, 2005 Pa. Dist. & Cnty. Dec. LEXIS 56, 71 Pa. D. & C.4th 236 (Pa. County Ct. 2005) (ruling that it was "apparent" that Harleysville Insurance Company "neglected to provide a good faith investigation").

88. Upon information and belief, Harleysville Insurance made representations that inappropriately lull insurance consumers such as Crescent Street into believing that Harleysville Insurance is providing not only insurance coverage, but also fair and reasonable claim review practices and procedures, including a promise to investigate in good faith and pay covered claims within a reasonable time frame.

89. Plaintiff and Harleysville Insurance occupy disparate bargaining positions as Harleysville Insurance sells insurance on pre-printed insurance policy forms drafted by insurance industry trade associations and by its own lawyers and only delivers the final insurance policy well after coverage has been purchased by the policyholder and bound.

90. Crescent Street acted and relied in a reasonable manner upon Harleysville Insurance's practices of advertising, promoting and selling insurance coverage when it purchased the Builder's All Risk Policy.

91. Upon information and belief, Harleysville Insurance engaged in a recurring pattern of selling property damage and Business Income loss insurance policies, yet without warning to insurance consumers, Harleysville Insurance regularly and routinely fails to live up to the promises to provide insurance coverage as set forth in such policies, fails to observe fair and reasonable claim adjustment practices and procedures, engages in unfair claims settlement practices that are barred under New York Insurance Law § 2601, and arranges for claims under such policies to be reviewed, investigated and otherwise handled by law firms that are disposed to representing the interests of Harleysville Insurance first and foremost, rather than the interests of the policyholder to whom Harleysville Insurance owes a duty of good faith and fair dealing.

92. Upon information and belief, when confronted with a policyholder's claim for a significant amount, Harleysville Insurance regularly and routinely engages in the practice, either directly or indirectly, of seeking to pay less than what is actually owed for such claim, and breaches its contractual obligations as alleged above, in violation of New York Insurance Law § 2601 and the regulatory support scheme for this law.

93. Harleysville Insurance's practice of advertising, promoting and selling insurance policies such as the Builder's All Risk Policy is deceptive and misleading to the public at large in that such insurance policies contain contradictory, false and misleading terms and provisions that facilitate Harleysville Insurance's attempts to deny or delay insurance coverage.

94. Harleysville Insurance's practice of advertising, promoting and selling insurance policies such as the Policy is deceptive and misleading to the public at large in that Harleysville Insurance ignores the terms providing coverage for insurance claims.

95. Harleysville Insurance's practices as described harm the public at large in a material way by misleading the public at large to rely upon advertisements, promotions, and products sold by Harleysville Insurance when purchasing insurance coverage and by thwarting and frustrating the claims review and investigation process with the intent and purpose of denying claims and discouraging consumers of Harleysville Insurance's products from pursuing legitimate claims under policies sold by Harleysville Insurance.

96. Crescent Street has been injured and damaged as a direct and proximate result of Harleysville Insurance's deceptive and misleading acts and unfair claim settlement practices prohibited under New York law.

97. Harleysville Insurance actions not only have caused injury to Crescent Street but, upon information and belief, have caused injury to numerous other similarly situated consumers and policyholders.

98. By reason of the foregoing, Crescent Street is entitled to recover all of its damages from Harleysville Insurance, including actual damages, consequential damages, punitive damages, treble damages, attorneys' fees, and costs.

COUNT III
(Declaratory Judgment Regarding Insurance Coverage)

99. Crescent Street repeats and re-alleges the allegations set forth in paragraphs 1 through 98 as though fully set forth herein.

100. Harleysville Insurance has failed and refused to provide the full insurance coverage benefits owed to Crescent Street for the hard damage loss amounts incurred to repair the Property due to the Incident.

101. Such refusal also extends to the soft cost losses and the Business Income loss amounts.

102. By reason of the foregoing, an actual and justiciable controversy exists between Crescent Street and Harleysville Insurance regarding its obligations to provide coverage for the unpaid loss amounts.

103. Plaintiff is entitled to a judicial declaration from this Court that: (i) Harleysville Insurance is obligated to perform its contractual obligations under the Builders All Risk Policy it sold Plaintiff, and (ii) that Plaintiff is entitled to insurance coverage for the full amount of its loss resulting from the Incident at the Property.

WHEREFORE, Crescent Street respectfully requests that the Court enter judgment:

A. On Count I in favor of CRESCENT STREET and against Harleysville Insurance in an amount to be determined, including compensatory damages, consequential damages (including attorneys' fees), pre- and post-judgment interest, attorneys' fees, costs, and other relief as this Court may deem appropriate.

B. On Count II in favor of Crescent Street and against Harleysville Insurance in an amount to be determined, including actual damages, consequential damages, punitive damages, treble damages, attorneys' fees, and costs.

C. On Count III in favor of CRESCENT STREET and against Harleysville Insurance: (a) determining and declaring that the subject hard damage repair costs are covered in full under the Builder's All Risk Policy; and (b) determining that Harleysville Insurance must pay the soft cost claims and the Business Income claims, in full.

D. For such other relief as this Court may deem appropriate.

JURY TRIAL DEMANDED

Crescent Street demands a trial by jury on all Counts so triable.

By: ______________________________

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